

IN SENATE OF THE UNITED STATES.

MARCH 10, 1848.

Submitted, and ordered to be printed.

Mr. MASON made the following

REPORT :

[To accompany bill S. No. 165.]

*The Committee of Claims, to whom was referred the petition of Gilbert Stalker and N. B. Hill, praying compensation for a steamboat lost in the public service, report:*

That, after a careful examination of the proofs accompanying the petition, they entirely concur in the views taken of this case by the Committee of Claims of the Senate as set forth in their report made on the 9th day of May, 1842, which is annexed hereto, as part of this report; and they report a bill accordingly for the relief of the petitioners. •

The committee think it proper also to remark, that the same report was adopted and made in this case by the committee of the Senate on the 7th of April, 1846, as the unanimous opinion of that committee.

MAY 9, 1842.

*The Committee of Claims, to whom were referred the petition and documents of Stalker & Hill, praying compensation for a steamboat lost in the public service, report:*

That on the 10th of January, 1838, the claimants chartered to Assistant Quartermaster Lieutenant John L'Engle a steamboat called the "James Boatwright," properly provided, at their own expense, in everything necessary to perform any service that might be required of her as a transport on the eastern coast of Florida or elsewhere; in consideration of which, the said L'Engle agreed to pay at the rate of four thousand dollars per month, as long as she should be detained in the service of the United States. Further, the agreement is as follows: first,

"It is understood and provided that the said steamer shall be retained in the service of the United States at least one month from

the date of this agreement, and as much longer as she may be required by the United States. And when discharged, if she be not in the port of Charleston, she shall be allowed a reasonable time to arrive at said port before her discharge shall take effect. It is also understood that when she is undergoing repairs, and consequently unable to execute the orders given by the proper officer of the quartermaster's department, such time shall be deducted.

"Payment shall be made at Charleston, monthly, on satisfactory evidence of service rendered for the time charged, provided the quartermaster be in funds; if not, as soon thereafter as he shall be provided with funds for that purpose."

The steamboat accordingly proceeded immediately to Florida, and was employed principally in towing vessels which arrived with supplies for the troops under General Jesup, at Fort Pierce, over the bar at the mouth of Indian river, and up to the fort, about six miles distant. When not thus actually employed, she lay in the river near the said fort. On the 22d of April following, she, early in the morning, towed a vessel out over the bar, and her captain, after casting off the vessel, discovered the buoy of an anchor which had been lost by some other vessel, stopped and took it up, which detained her, as he swears, about twenty minutes. He also deposes that he did not lose the tide by this detention, but that it was as high when he passed in as when he went out. In passing the bar on her return, the boat struck or touched bottom, but proceeded back to anchor about 7 o'clock, a. m., without apparent injury. Having obtained permission to sail for Charleston the next day with some prisoners, Captain Donnell, who commanded said steamboat, caused her bottom and sides to be scraped, to take off the grass, moss, barnacles, &c., which adhered to her. About 1 o'clock the following morning she sprung a leak; and, notwithstanding all the efforts of her crew, and all the assistance of fifty men sent from the fort, the leak continued to increase, and she sunk about noon of that day; a part of her engine only being saved.

The claimants allege that the steamboat was lost in consequence of having her bottom cut through by the worms which infested the waters in which she was; that that was a danger ordinary and well known on that coast, and which could and would have been obviated by timely repairs; but for the exigency of the public service, and the refusal of Lieutenant Hooker, commanding at Fort Pierce, to allow her to go to a port where such repairs were practicable, and that as the destruction took place by reason of such detention, against the will of the captain of the boat, and after repeated applications by him for leave to go to a place of repair, that the government is bound to afford them an equitable indemnity.

This memorial has been heretofore before the Senate, and a report adverse to the claim was made on the 30th June, 1840, upon the ground mainly that Lieutenant Hooker deposed, that when the applications were made to him by Captain Donnell, (and he admits that they were made,) he supposed them to be occasioned by the disagreeable nature of the service in which the captain was engaged, rather than by any real danger to his boat, and "that when she

towed out the vessel on the morning before her loss, she remained at sea for some time fishing for anchors, for the personal profit, as he had no doubt, of Captain Donnell. While in this employment, the tide ebbed so much that the boat could not recross the bar without collision—she struck.” He further proceeds: “My pilot, Arnow, who was on board the boat at the time of striking, assured me that the blow was a severe one, and it unquestionably occasioned her loss by wrenching a plank from her bottom; the opinion of the pilot is entitled to great weight, for he had been a number of years in the service on that coast.

“Other circumstances attending the loss of the ‘James Boatwright’ seem to confirm his statement. The boat was discovered to be in a sinking condition about 10 o’clock, p. m., on the 22d of April, and such was the rapidity with which the water entered her hold, that forty men, with pumps, buckets, and barrels, could not prevent her going to the bottom. Large fish were also seen in her hold, which we would scarcely expect to find had the leakage been caused by worms. The plank wrenched from the bottom of the boat must have been under her machinery, as the opening through which the water entered could not be found,” &c.

This statement is made upon the information, as is alleged, of the pilot Arnow, Lieutenant Hooker not having been on board. Since the date of the former report, the claimants have taken the affidavit of the said Arnow, which does not sustain it in any important particular; and as the testimony has a material bearing upon the conclusion to which the committee have come in this case, they insert it at length. He swears “that he was the pilot of the steamer James Boatwright, at the time of her loss; deponent having been employed to act as such by the United States; deponent was on board said steamer in his capacity as pilot aforesaid on the 22d of April, 1838, when she towed a vessel over the bar of the Indian river, in the Territory of Florida, and when she struck on her return; she struck once heavily; she struck before meridian; the said steamer proceeded to the landing without any injury having been suspected or detected, and remained at the landing all day, apparently uninjured; the distance from the bar to the landing is about two miles. We never discovered, on examination, any plank torn off or broken; the leak was discovered about 2 o’clock of the morning of the 23d of April, and during the time that she had been in still water. The said steamer had neither received nor discharged loading or wood from the time she crossed the bar as aforesaid; deponent neither saw any fish in her hold when she was sinking, nor did he then hear of any such circumstance. Witness knows that Indian river is exceedingly destructive to vessels, from the worms which infest it. The worms will eat a vessel through in three or four months, however new she may be. The schooner Venus was eaten through, and her bottom completely honey-combed by the worms in four months; the said schooner was a new vessel. Witness was an old resident of Florida, and well acquainted with Indian river and its peculiarities. Deponent believes that if a plank had been torn off by the striking of the steamer as aforesaid at the

mouth of the river, the leak would have discovered itself at once, or much sooner than the said leak was discovered."

Other witnesses swear to the destructive action of the worms upon vessels in those waters, and that Captain Donnell was warned that his boat could not be safe in them more than six or eight weeks without being overhauled and repaired. He deposes positively, that at the end of about two months from the time his boat went into service, he applied to Lieutenant Hooker to be relieved, in consequence of this danger to the boat. That Lieutenant Hooker replied that he would have no objection to relieving him, but that there was, in that service, no other boat except it, James Boatwright, of sufficiently light draught to serve as a tow-boat over the bar of Indian river; and as this was the only mode of procuring supplies for the army at Fort Pierce, she could not be allowed to depart.

The testimony adduced by the claimants satisfies the committee that the destruction of the said steamer was occasioned by worms, and not by striking on the bar, as is supposed by Lieutenant Hooker; and they are of opinion that by the charter-party she was not bound to remain in service, in view of her certain destruction by that means; and that her detention, after her danger became imminent, must be considered on a footing of duress or impressment, entitling the owners to compensation.

In making this compensation, however, the rule heretofore adopted by the government, in indemnifying for transports on land, such as wagons and horses, hired at liberal prices, and lost in the public service, or for buildings rented and destroyed while in the occupation of troops, in the opinion of the committee, ought to be adhered to; that is to say, the steamer should be valued to the government at what she is proved by the agent of her owners to have been worth when she entered the service, to wit: \$15,000, and the cost of manning, and provisioning, and supplying her with fuel while she was in service, as well as the freight for transporting the engine saved to Charleston, should also be added on the side of the account. And on the other, the United States should be credited with the whole amount paid for hire of the steamer, officers, and crew, and with the value, at Charleston, of the engine, or the parts of it which were preserved. This appears to the committee to be an equitable mode of settlement; and they therefore report a bill accordingly.